THE HON'BLE SRI JUSTICE P.S. NARAYANA

Writ Petition No.21509 of 2006

Date: 16th October, 2006

Between :-

M/s.New Asoka Restaurant & Bar,
Bearing Municipal No.2-5-301, Main Road,
Nakkalagutta, Hanamkonda rep. by its
Proprietor S.Venkat Reddy & another ..
Petitioners

And

The Commissioner, Municipal Corporation,
Warangal & another ..
Respondents

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Writ Petition No.21509 of 2006

ORDER:-

The matter is coming up for *admission.*

2. Sri Durga Nageshwar Rao takes notice on behalf of R.1. Sri Narender takes notice on behalf of R.2.

3. Heard Sri M.R.K.Chowdary, the learned senior Counsel representing the writ petitioners.

4. Sri M.R.K.Chowdary, the learned Counsel states that without following the due process of law and without taking the lawful steps as required by law, the respondents are contemplating to proceed with the demolition activity as to the subject matter of the Writ Petition and the same cannot be sustained.

5. The learned Counsel representing the respondents would maintain that only markings had been give and no further action as such had been taken in this regard.

6. Heard the Counsel.

7. The writ petitioners are questioning the action of the respondents in seeking to demolish a part of the premises owned by one Smt.B.Neeraja, sister of the second petitioner. It is stated that Smt.Neeraja had let out the premises to the first petitioner for carrying out the business

under the Excise Act and the Rules made thereunder. It is also stated that it is only by way of obtaining the premises by way of lease and also obtaining the due consent from its owner for establishing the said business. It is stated that Smt. Neeraja is not in India and she has been residing in U.S.A. and she has been in constant contact. It is also stated that Smt.Neeraja was required to execute a Deed of Power of Attorney to protect her *bona fide* interests in the property owned by her in India with special reference to the property in question, which is under “Lease” to carry out the business. It is also stated that Smt.Neeraja has already executed a Power of Attorney and the same is under transit. It is also further stated that Smt.Neeraja had instructed her own brother, who is the second petitioner, to sign on Vakalat as a second petitioner along with first petitioner, seeking to protect the first petitioner’s interests in the business run from the premises in question owned by Smt.Neeraja. It is also stated that after getting the Power of Attorney, appropriate steps would be taken to bring Smt.Neeraja as a petitioner in the present Writ Petition as required in this regard. It is also further stated that if the first petitioner has to wait till the receipt of the Power of Attorney examined and dispatched by Smt.Neeraja, which is in transit, the property in question may be damaged by the respondents

and therefore, under the instructions of Smt.Neeraja, her brother, who is the second petitioner herein, signed the Vakalat as the second petitioner and accordingly, this Writ Petition is filed by the first petitioner on his own behalf and also on behalf of Smt.Neeraja under her instructions, permitting the second petitioner herein to be as petitioner No.2. It is also stated that that the premises bearing Municipal No.2-5-301, situated at Nakkalagutta, abutting the main road, leading from Subedari to Chowrasta, Hanamkonda, is owned by Smt.Neeraja. It is also stated that as a lessee, the first petitioner obtained licence No.42/2006-2007, dt.13-7-2006 to carry his business of selling all kinds of Indian-made liquor and Foreign-made liquor and the particulars of the said premises and its boundaries are furnished in the licence itself and therefore, a copy of the licence in Form – 2B is filed. It is stated that before opening of a Bar and Restaurant in the name and style of M/s.New Ashoka Bar & Restaurant at the premises in question, the first petitioner was required under law to obtain a “No Objection Certificate” from the Municipal Corporation of Warangal and accordingly the “No Objection Certificate” in Roc.No.F2/17068/2006, dt.30-6-2006 was obtained and a copy of it also filed. It is further stated that the first petitioner obtained the licence

on payment of a consideration of a fee of Rs.16,00,000/- and this amount was paid by way of a challan on furnishing of a Bank Guarantee and the licence commences from 1-7-2006 and expires by 30-6-2007. It is stated that the first petitioner has been paying the rent regularly for the premises to its owner and neither the owner nor the first petitioner are put on any notice about the necessity of destroying any part or portion of the said premises by the respondents or any other officers concerned. It is also stated that the said premises in question is not a subject matter of any Land Acquisition proceedings so far either at the instance of any other authority or the respondents herein. It is stated that the respondents are not entitled to take over possession of the whole or part of the premises in question held by the owner without taking lawful steps in accordance with law. It is also stated that the only way by which that the land held by any person including the owner of the first petitioner can be taken only by way of resorting to the provisions of law providing for land acquisition or requisition and even this possession can be done only by resorting to lawful methods provided under law. It is also further stated that even the owner of the property lawfully entitled to take over vacant possession is not under law empower to forcible dispossession of the lessee on the

ground that the lease time had expired and the lessee holding over is detrimental to the interests of its owner. It is also stated that a lessor with the best of title has not title to resume possession extra-judicially by use of force from the lessee even after the expiry of the lease inspite of termination of the lease and in fact, in a very recent case, the Apex Court has been pleased to hold that even after termination of the lease, lessee continues to be in judicial possession and forcible dispossession is held to have been prohibited under the Constitution and keeping the ration decided/laid down in such cases, it is to be concluded that the Government or its authorities cannot forceably dispossess any person in possession or its owner by way of resumption of possession except as determined in accordance with law and this has been the settled principles of law. It is also stated that to hold the property in several capacities is protected under Article 300-A of the Constitution of India. Under Article 300-A of the Constitution of India, no person shall be deprived of his property save by authority of law. The right to do business is right to property. It is also further stated that to hold the premises as a “Lessee” is a right conferred upon the first petitioner and thus, the first petitioner is entitled to seek protection of such right as a property right and this is

the Constitutional Right guaranteed though not a Fundamental Right. It is stated that if the first petitioner deprived of his possession of the property, that amounts to interferring with his right to hold property as a 'Lessee" and equally applies to and effects the rights of the owner holding the property as a "Lessor" and thus, any amount or attempt to seek to dispossess the right to property is a violation or infringing of a right guaranteed under the Constitution. It is also further stated that it is necessary to notice that laws provided for acquisition of Estates or seeking to acquire property for "public purposes" are saved by Articles 31-A and 31-B of the Constitution of India and this "saving" is only on the ground of alleged infringement of Article 14 or Article 19. It is also stated that Article 31-B provides for saving of such laws specified in the IX Schedule. It is stated that though the provisions of such law are saved under the provisions of the Act, it has been made clear in the subsequent larger Bench of the Apex Court and it is made now clear that inclusion in the IX Schedule of any law still can be challenged on the ground of damage to the public structure of the Constitution as held in ***Keshavananda Bharathi, Vaman Rao*** etc., cases. It is further stated that in any event, it is open to the authorities to resort to acquisition or requisition of the land is required but in accordance with law. It is

also further stated that the Land Acquisition Law pre-supposes the existence of the requirement of such land for public purpose, and this decision must be basing upon the record, and in the absence of any material available on record and also in the absence of any decision to seek to acquisition or requisition of land in question, it is not permissible for any authority to seek to dispossess for achieving the object even in the interest of public purpose. It is also stated that even the public interest would not empower the authorities to be aggressive and arbitrary in their actions in seeking to dispossess the holders of the property or its enjoyers. It is further stated that neither possession of the property nor the rights in the property can be taken away without following the prescribed procedure for acquisition or requisition. It is also further stated at para 7 of the affidavit filed in support of the Writ Petition that while so, the respondents herein have made an attempt to make markings on the premises, which is in the possession and enjoyment of the petitioners and the first petitioner is running his business. It is also stated that noticing the respondents getting certain portion earmarked for the purpose of demolition in the guise of developing a circle in front of or adjacent to the area where the premises is situated, the petitioners

objected for such markings done by the respondents arbitrarily and capriciously in a clandestine manner behind their back, initially marked on one side to a depth of 9-1/2 ft. and another side to a depth of 5-1/2 ft. It is stated that, in fact, in order to have the Circle on the 80 ft. road, if any land is required, it is open temporary authorities to seek to acquire the required land from all sides to have a Circle and in case of urgency of such acquisition, it is open to the authorities to take steps under Section 17 of the Act, dispensing with 5-A Enquiry, but without resorting to Land Acquisition proceedings, no authority is entitled to interfere with right to possession of immovable property of any person and in the context of well settled law. It is also stated that it is not open to the respondents even for the public purpose to demolish any portion of the built-up area in the premises in question and even in the guise of public interest and public purpose including the road widening and maintenance of Circle on the 80 ft. road, it is not open to the authorities to take arbitrary actions detrimental to the interests of the owner of the land and the possessor and enjoyer of the land. It is also further stated that the first petitioner, being the possessor and enjoyer of the land, the first petitioner had sought instruction from the owner of the land and on her instruction, they have opposed the actions of the respondents by issuance of a

notice dated 5-10-2006 and a copy of this notice is filed herewith and thereafter, as a sequel to the notice, instead of responding to the notice, the respondent authorities have threatened them by saying that instead of taking 9 ft. on one side, they are willing to take 21 ft., totally destroying the entire premises and its purpose for carrying out the business. It is stated that the entire action of the respondents is *mala fide* and it is intended to harass them from doing business and it is only intended to harass its owner since the owner is presently not available in India and taking undue advantage of the absence of its owner in India, being in U.S.A. residing with her husband, with a view to thwart the impending danger displayed by the respondents, under the instruction of the original owner, the second petitioner is impleaded as petitioner to protect the interests of the owners, the petitioners herein and therefore, on receipt of such threats from the respondents, the petitioners again constrained to issue second notice dated 13-10-2006 and a copy is also filed herewith. It is also further stated that the action of the respondents is thus without any power or authority and therefore, the petitioners are constrained to question their action in seeking to demolish the entire area covered by the markings made by the authorities and affecting the

premises on one side abutting the road to a depth of 21 ft. and 5-1/2 ft. on the opposite side. It is stated that if this part of the property is to be demolished, the remaining portion may not be of any use for the petitioner herein to carry out business and therefore, the demolition is not permissible and the authorities are under obligation to eschew their unlawful actions in this regard. It is also stated that even in the guise of urgency they are required to take steps for acquisition or acquisition of the land in accordance with law and the procedure provided for in this respect and thus without following any procedure under settled principles of law, it is not open for the respondents to take any arbitrary steps to seek demolition of the portions of the premises and resorting to such actions of demolition of the premises in which the petitioners had been carrying the business is detrimental to their interest. It is further stated that the building to the depth of 5 ½ ft. on the northern side and 21 ft. on the southern side abutting the 80 feet road is sought to be demolished on Monday and the owner and the first petitioner are intended to be dispossessed without any manner of right or lawful entitled for such action. It is also further stated that the petitioners would suffer irreparable loss if they were disturbed from enjoying the premises. It is also further stated that so far the respondents have not

taken any steps to seek to acquire the premises by resorting to Land Acquisition Act and a plan showing the area which is sought to be demolished is also filed. In such circumstances, the writ petitioners had approached this Court praying further reliefs referred to supra.

8. In the light of the facts and circumstances, it is needless to say that inasmuch as the respondents are bound to follow the due process of law before taking up the further demolition activity, this Court is of the considered opinion that this writ petition be disposed of directing the respondents not to resort to any demolition activity relating to the subject matter of the writ petition unless and until the due process of law is followed as per the provisions of the Hyderabad Municipal Corporation Act, 1955.

9. With the above directions, the writ petition is disposed of. No order as to costs.

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Justice P.S. Narayana

16th October, 2006

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